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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 BRIAN NELSON WILLIAMS,

14 Plaintiff,

15 vs.

16 CITY OF MARTINEZ, GLENN WALKUP,  
17 J. ROGERS, B. CARTER, and DOES 1  
18 through 20,

19 Defendants.

**Case No.**

**COMPLAINT FOR DAMAGES**  
**[42 U.S.C. § 1983]**

**JURY TRIAL DEMANDED**

20 Plaintiff BRIAN NELSON WILLIAMS hereby complains and hereby alleges the  
21 following:

22 **INTRODUCTION**

23 1. This action arises under Title 42 United States Code section 1983.  
24 Jurisdiction is conferred upon this court by Title 28 United States Code sections 1331  
25 and 1343. The unlawful acts and practices alleged herein occurred in the CITY OF  
26 MARTINEZ, in Contra Costa County, California, which is within this judicial district.  
27 Venue is conferred upon this court by Title 28 United States Code section 1391(b).

28 2. Plaintiff has satisfied all requirements of state law in notifying defendants  
of his intention to pursue state law tort claims against defendants.

3. Plaintiff hereby demands a jury trial in this action.

**IDENTIFICATION OF PARTIES**

4. Plaintiff BRIAN NELSON WILLIAMS ("Plaintiff" or "WILLIAMS") is a citizen of the United States and a resident of the CITY OF MARTINEZ.

5. Defendant CITY OF MARTINEZ ("CITY") is a public entity, duly organized and existing under the laws of the State of California. CITY operates under its authority the Martinez Police Department.

6. At all relevant times, defendant GLENN WALKUP ("WALKUP") was a police officer for the Martinez Police Department. At all times mentioned in this complaint, WALKUP was acting under color of law and within the course and scope of his duties as a police officer for the Martinez Police Department.

7. At all relevant times, defendant J. ROGERS ("ROGERS") was a police officer for the Martinez Police Department. At all times mentioned in this complaint, RODGERS was acting under color of law and within the course and scope of his duties as a police officer for the Martinez Police Department.

8. At all relevant times, defendant B. CARTER ("CARTER") was a member of the Martinez Police Department holding the rank of Corporal. At all times mentioned in this complaint, CARTER was acting under color of law and within the course and scope of his duties as a supervisory officer for the Martinez Police Department and as the supervisor of WALKUP and ROGERS.

9. Plaintiff is ignorant of the true names and capacities of those defendants identified in this complaint as DOES 1 through 20. Plaintiff will amend his complaint to allege the true names and capacities of these defendants when they have been ascertained.

10. Plaintiff is informed and believes, and on that basis alleges that each of the defendants sued in this complaint, including DOES 1 through 20, is responsible in some manner for the damages alleged. Each reference in this complaint to "defendant," "defendants," or to a specifically-named defendant, refers also to DOES 1 through 20.

**FACTS SUPPORTING PLAINTIFF'S CLAIMS FOR RELIEF**

11. During the early morning of July 20, 2006, the Martinez Police Department received a call complaining about a noisy party at the home of WILLIAMS in Martinez. The dispatcher contacted WALKUP with information about the complaint. WALKUP reported to the address given, along with CARTER and ROGERS, and an additional officer, John Butler ("Officer Butler"). WALKUP was also accompanied by his police canine, "Enzo."

12. When Defendants and Officer Butler arrived at Plaintiff's home, the area was quiet with no evidence of a noisy party. Nonetheless, the officers sought entry to Plaintiff's home. The front door was opened by Michele Leveque, an acquaintance of WILLIAMS. WALKUP, CARTER, ROGERS and Officer Butler entered WILLIAMS' home along with Enzo.

13. Leveque told Defendants and Officer Butler that WILLIAMS was upstairs in his bedroom. Officer Butler handcuffed Leveque and directed her to sit down. Defendants went upstairs with Enzo.

14. WALKUP released Enzo and gave him a search command. Enzo located WILLIAMS in his bedroom. At the direction and with the encouragement of WALKUP, Enzo bit WILLIAMS numerous times in his right shoulder and forearm and his right thigh, calf and foot, inflicting multiple puncture wounds.

15. WALKUP did not prevent Enzo from biting WILLIAMS or from continuing to bite WILLIAMS. CARTER and ROGERS did not prevent Enzo from biting WILLIAMS or from continuing to bite WILLIAMS. CARTER and ROGERS did not intercede to require WALKUP to prevent Enzo from biting or from continuing to bite WILLIAMS.

16. WILLIAMS had not committed any crime whatsoever, was not suspected of any criminal conduct whatsoever, and was peacefully relaxing in his own bedroom when he was attacked. At no time was it appropriate for Defendants to apply any force whatsoever against WILLIAMS. At all relevant times, Defendants knew there

1 was no justification for the use of any force whatsoever against WILLIAMS. At all  
2 relevant times, Defendants knew they were obliged to prevent Enzo from biting  
3 WILLIAMS and to stop Enzo from continuing to bite WILLIAMS.

4 17. Defendants obtained emergency medical treatment for Plaintiff and then  
5 had him transported to the Martinez Detention Facility. WALKUP sought prosecution  
6 of Plaintiff for violation of Penal Code 148a, resisting or obstructing a peace officer.  
7 The District Attorney declined to prosecute in the interests of justice.

8 18. The day after he was arrested and attacked, WILLIAMS sought further  
9 emergency medical assistance. The puncture wounds inflicted by Enzo had become  
10 painfully infected, requiring Plaintiff to undergo extensive antibiotic treatment. These  
11 injuries and the treatment required therefore prevented Plaintiff from attending to his  
12 usual occupation and resulted in a substantial loss of income.

13 19. Plaintiff is informed and believes, and on that basis alleges that CITY, in  
14 its official capacity, failed to adequately train police officers for the Martinez Police  
15 Department regarding the appropriate use of force, including police canines, against  
16 citizens. In failing to provide adequate training in these areas, CITY, acting through its  
17 policy makers and officials delegated with the responsibility, were deliberately  
18 indifferent to the likelihood that police officers for CITY, including Defendants, would  
19 arbitrarily violate their authority by employing unnecessary and excessive force,  
20 violating the constitutional and statutory rights of citizens.

21 20. Plaintiff is informed and believes, and on that basis alleges that  
22 Defendants, including WALKUP, were not subjected to appropriate discipline for the  
23 gross abuse of authority against Plaintiff. As a direct consequence of the failure to  
24 train and discipline Defendants, the violation of Plaintiff's constitutional rights by  
25 Defendants was authorized, condoned, tacitly approved and/or ratified by CITY.

26 21. Plaintiff is informed and believes, and on that basis alleges that, at the  
27 time of the conduct described in this complaint, it was the pattern and practice of CITY,  
28 acting by and through the Martinez Police Department to tolerate, ratify and condone

1 the unlawful use of force, including the unlawful use of police canines, by officers of  
 2 the Martinez Police Department. This pattern and practice is as consistent and  
 3 pervasive as to constitute a de facto policy of the Martinez Police Department and  
 4 CITY. This pattern, practice, and policy of Defendants was a moving force behind the  
 5 physical, emotional, financial, and constitutional harm suffered by Plaintiff as described  
 6 in this complaint.

### 7 **DAMAGES**

8 22. Defendants' brutal conduct and the unconstitutional policies and  
 9 practices of CITY violated Plaintiff's statutory and constitutional rights under the laws  
 10 of the United States and of the State of California, and deprived Plaintiff of his security  
 11 and dignity as a citizen of the United States and as a resident of the State of  
 12 California. As a proximate result of the misconduct of Defendants, Plaintiff suffered  
 13 physical injury and disability, fear, humiliation, worry, anxiety and severe emotional  
 14 distress.

15 23. As a further proximate result of Defendants' conduct, Plaintiff lost wages  
 16 and incurred expenses for medical treatment.

17 24. Plaintiff further incurred expenses for the services of attorneys and  
 18 investigators in seeking civil remedies for the violation of his constitutional rights by  
 19 Defendants.

20 25. The conduct of WALKUP as described in this complaint was malicious,  
 21 fraudulent, reckless and oppressive, and was committed with the intent to cause  
 22 physical and emotional harm to Plaintiff and to deprive Plaintiff of his constitutional  
 23 rights. Plaintiff is therefore entitled to an award of punitive and exemplary damages  
 24 against WALKUP.

### 25 **FIRST CAUSE OF ACTION**

26 **42 U.S.C. § 1983**

**(Against Defendants WALKUP, ROGERS, CARTER and DOES 1 through 20)**

27 26. Plaintiff hereby realleges and incorporates by this reference paragraphs  
 28 1 through 25, as though fully stated in this cause of action.

1           27. WALKUP, ROGERS, CARTER and DOES 1 through 20 acted under  
2 color of law and in abuse of their authority as police officers for the Martinez Police  
3 Department in causing WILLIAMS to be repeatedly bitten by their police canine without  
4 any lawful justification, thereby depriving Plaintiff of certain constitutionally-protected  
5 rights, including but not limited to, the right to be free from unreasonable searches and  
6 seizures, and from the use of excessive force by law enforcement officers, as  
7 guaranteed by the Fourth Amendment to the United States Constitution.

8           28. As a proximate result of the conduct of Defendants, Plaintiff incurred  
9 damages for the deprivation of his constitutional rights, and suffered severe physical  
10 and emotional injuries and sustained additional damages as described in this  
11 complaint.

12           29. WALKUP acted in reckless and callous disregard for the constitutional  
13 rights of Plaintiff, and with willful oppression and malice. Plaintiff therefore seeks an  
14 award of punitive damages against WALKUP in his individual capacity.

15           WHEREFORE, Plaintiff prays for judgment as set forth below.

16                                   **SECOND CAUSE OF ACTION**  
17                                   **42 U.S.C. § 1983**  
                                     **(Against CITY)**

18           30. Plaintiff hereby realleges and incorporates by this reference paragraphs  
19 1 through 29, as though fully stated in this cause of action.

20           31. The practices and policies maintained by CITY under color of law were a  
21 moving force behind the harm suffered by Plaintiff. CITY was deliberately indifferent to  
22 the risk that the practices and policies of the Martinez Police Department would cause,  
23 and did in fact cause Plaintiff to be deprived of his constitutionally-protected rights, as  
24 set forth in this complaint.

25           32. As a proximate result of the conduct of Defendants, Plaintiff incurred  
26 damages for the deprivation of his constitutional rights and suffered severe physical  
27 and emotional injuries and sustained additional damages as described in this  
28 complaint.

1 WHEREFORE, Plaintiff prays for judgment as set forth below.

2 **THIRD CAUSE OF ACTION**  
3 **48 U.S.C. § 1983**  
4 **(Against CITY)**

5 33. Plaintiff hereby realleges and incorporates by this reference paragraphs  
6 1 through 32 as though fully stated in this cause of action.

7 34. CITY's failure to train and/or discipline WALKUP, ROGERS, CARTER  
8 and DOES 1 through 20 and CITY's ratification of Defendants' conduct encouraging  
9 and allowing Enzo to repeatedly bite Plaintiff, caused the violation of Plaintiff's  
10 constitutional rights, as alleged in this complaint.

11 WHEREFORE, Plaintiff prays for judgment as set forth below.

12 **FOURTH CAUSE OF ACTION**  
13 **California Civil Code § 52.1**  
14 **(Against WALKUP, ROGERS, CARTER, CITY and DOES 1 through 20)**

15 35. Plaintiff hereby realleges and incorporates by this reference paragraphs  
16 1 through 34, as though fully stated in this cause of action.

17 36. In engaging in the conduct described in this complaint, Defendants  
18 interfered and attempted to interfere with Plaintiff's rights, as protected by the  
19 Constitutions and laws of the United States and of the State of California by threats,  
20 intimidation and coercion. The violation of these rights by is actionable under California  
21 Civil Code § 52.1.

22 37. The rights violated by Defendants include the right to be free from the  
23 arbitrary abuse of the police power, including the use of unnecessary and excessive  
24 force by police officers, as protected by Article I, Section 13 of the California  
25 Constitution, and the Fourth Amendment to the United States Constitution.

26 38. Defendants violated these rights while acting under color of law and in  
27 the course and scope of their employment as police officers for CITY.

28 39. As a proximate result of the conduct of Defendants, Plaintiff suffered  
damages as described in this complaint, including actual damages within the meaning  
of California Civil Code § 52.



1 40. As a proximate result of the conduct of Defendants, Plaintiff is also  
2 entitled to an award of exemplary damages, civil penalties and attorneys' fees, as  
3 provided by California Civil Code § 52.

4 WHEREFORE, Plaintiff prays for relief as set forth below.

5 **FIFTH CAUSE OF ACTION**  
6 **Battery**  
7 **(Against WALKUP and CITY)**

8 41. Plaintiff hereby realleges and incorporates by this reference paragraphs  
9 1 through 40, as though fully stated in this cause of action.

10 42. The conduct of WALKUP in causing and encouraging Enzo to repeatedly  
11 bite WILLIAMS was committed intentionally without Plaintiff's consent and without  
12 lawful justification or provocation. Such conduct constituted a battery of Plaintiff by  
13 WALKUP.

14 43. WALKUP battered plaintiff while acting under color of law and in the  
15 course and scope of his employment as a police officer for CITY.

16 44. As a proximate result of WALKUP's conduct, Plaintiff suffered physical  
17 and emotional injuries and incurred damages as described in this complaint.

18 45. The conduct of WALKUP as described in this cause of action was  
19 malicious, fraudulent, reckless and oppressive, and was committed with the intent to  
20 cause physical and emotional harm to Plaintiff. Plaintiff is therefore entitled to an  
21 award of punitive and exemplary damages against WALKUP.

22 WHEREFORE, Plaintiff prays for judgment as set forth below.

23 **SIXTH CAUSE OF ACTION**  
24 **False Imprisonment**  
25 **(Against WALKUP, ROGERS, CARTER, CITY and DOES 1 through 20)**

26 46. Plaintiff hereby realleges and incorporates by this reference paragraphs  
27 1 through 45, as though fully stated in this cause of action.

28 47. On July 20, 2006, Defendants affected a false imprisonment of Plaintiff  
by unreasonably detaining, arresting and imprisoning Plaintiff in the absence of  
probable cause. Defendants affected the false imprisonment of Plaintiff by means of



1 actual force, implied threats of force and other forms of unreasonable duress.  
2 Defendants affected the false imprisonment of WILLIAMS within the course and scope  
3 of their employment with CITY.

4 48. As a proximate result of Defendants' false imprisonment of Plaintiff,  
5 Plaintiff suffered physical and emotional injuries and incurred damages as described in  
6 this complaint.

7 49. The conduct of WALKUP as described in this cause of action was  
8 malicious, fraudulent, reckless and oppressive, and was committed with the intent to  
9 cause physical and emotional harm to Plaintiff. Plaintiff is therefore entitled to an  
10 award of punitive and exemplary damages against WALKUP.

11 WHEREFORE, Plaintiff prays for relief as set forth below.

12 **SEVENTH CAUSE OF ACTION**  
13 **Negligence**  
**(Against WALKUP, ROGERS, CARTER, CITY and DOES 1 through 20)**

14 50. Plaintiff hereby realleges and incorporates by this reference paragraphs  
15 1 through 49, as though fully stated in this cause of action.

16 51. At all relevant times, WALKUP, ROGERS, CARTER and DOES 1  
17 through 20 were subject to a duty of care, to avoid causing foreseeable harm to other  
18 persons, including WILLIAMS.

19 52. Acting within the course and scope of their employment with CITY,  
20 Defendants breached their duty of care to WILLIAMS in negligently allowing and  
21 encouraging Enzo to repeatedly bite WILLIAMS, and in failing to prevent Enzo from  
22 repeatedly biting WILLIAMS.

23 53. As a proximate result of Defendants' negligence, Plaintiff suffered  
24 physical and emotional injuries and incurred damages as set forth in this complaint.

25 WHEREFORE, Plaintiff prays for relief as follows:

- 26 (1) For general damages, according to proof;  
27 (2) For special damages, according to proof;  
28 (3) For damages for the violation of constitutional rights, according to proof;

- 1 (4) For treble damages and civil penalties, pursuant to California Civil Code  
2 § 52;
- 3 (5) For punitive and exemplary damages against WALKUP according to  
4 proof;
- 5 (6) For attorney's fees incurred in the prosecution of this action pursuant to  
6 42 U.S.C. § 1988 and California Civil Code § 52;
- 7 (7) For an award of prejudgment interest as allowable by law; and
- 8 (8) For such other relief as the court may deem reasonable and just.

9

10 **CASPER, MEADOWS, SCHWARTZ & COOK**

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12 Dated: January 22, 2008

/s/ Stan Casper

13 Stan Casper  
14 Attorneys for Plaintiff  
15 BRIAN NELSON WILLIAMS  
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